

# Regular Meeting

<b>Agenda Item #</b>	7
<b>Meeting Date</b>	April 14, 2008
<b>Prepared By</b>	Sara Anne Daines HCD Director
<b>Approved By</b>	Barbara B. Matthews City Manager

<b>Discussion Item</b>	Resolution Authorizing Agreement with Old Takoma Business Association
<b>Background</b>	<p>On April 7, 2008, the Council met with representatives of the Old Takoma Business Association (“OTBA”) and were given an opportunity to consider their request for continued operating support for the organization’s Main Street Takoma initiative. The Council has supported the Main Street program for several years, providing an operating subsidy of \$25,000 per year over the past four years.</p> <p>The Council expressed general support of the organization during the discussion, acknowledging the contributions it has made to local businesses in the Old Takoma area. No consensus on the amount or duration of any additional operating support was reached.</p> <p>In preparation for the April 14 meeting, an agreement was drafted by staff. It would provide continued operating support to OTBA in the amount of \$25,000 for FY09 and would provide for an extension of the agreement for two additional one-year terms. Such extension would be contingent upon the continued availability of funds and its endorsement by both the Council and OTBA. The organization would be required to complete a number of specific tasks (identified in Article 3. <i>Work Plan</i> of the Agreement). Matching funds are also required.</p>
<b>Policy</b>	“The viability of the Old Takoma district is important to the economic health and quality of life of the community and its continued improvement and revitalization is a local economic development goal.”
<b>Fiscal Impact</b>	FY09 - \$25,000
<b>Attachments</b>	<ul style="list-style-type: none"> <li>• Draft Resolution Authorizing Agreement</li> <li>• Draft Agreement between City of Takoma Park and OTBA</li> </ul>
<b>Recommendation</b>	To review draft agreement and consider adoption of the accompanying resolution.
<b>Special Consideration</b>	The association has requested a \$30,000 subsidy and a three-year agreement.

Introduced by:

**CITY OF TAKOMA PARK, MARYLAND**

**RESOLUTION 2008-**

**AUTHORIZING AGREEMENT WITH OLD TAKOMA BUSINESS ASSOCIATION**

**WHEREAS,** the City of Takoma Park, Maryland is interested in promoting the revitalization of our community by encouraging the development and expansion of businesses within the Old Takoma area; and

**WHEREAS,** the Old Takoma Business Association (OTBA) represents the shared interests of the businesses, organizations, and property owners in Old Takoma; and

**WHEREAS,** the Council recognizes the many contributions that OTBA, through its Main Street Takoma initiative, has made to promote the business community and to maintain the economic vitality of the area; and

**WHEREAS,** the City has provided technical and financial support to the organization and wishes to continue this support.

**NOW THEREFORE, BE IT RESOLVED THAT** the Council of the City of Takoma Park, Maryland hereby authorizes the execution of an Agreement with the Old Takoma Business Association and the provision of an operating subsidy in the amount of Twenty-five Thousand Dollars (\$25,000.00) for FY09.

**BE IT FURTHER RESOLVED THAT** such Agreement may, depending upon the availability of funds, be extended for two additional one-year periods.

**Adopted this \_\_\_\_\_ day of April 2009.**

Attest:

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Jessie Carpenter, CMC  
City Clerk

## **AGREEMENT**

### **City of Takoma Park, Maryland, and the Old Takoma Business Association, Inc.**

THIS AGREEMENT made this \_\_\_\_ day of April 2008, by and between the City of Takoma Park, Maryland ("City") and the Old Takoma Business Association, Inc. ("OTBA"), a Maryland non-profit corporation, sets forth the agreement between the City and OTBA.

#### **Article 1. PURPOSE.**

This Agreement provides for financial support of the Old Takoma Business Association, Inc. and the Main Street Takoma ("Main Street") program.

OTBA represents the shared interests of the businesses, organizations, and property owners located along and in the vicinity of Carroll Avenue from Lee Avenue in Takoma Park to 4<sup>th</sup> Street NW in Washington, DC. The Maryland portion of this area is located within the Takoma Park Historic District and has been designated by the City and Montgomery County as a commercial revitalization area and by the State of Maryland as a Maryland Main Street. Given the economic importance of the area to the community and the continuing challenges its businesses face, the City has included resources in its FY09 proposed budget to support OTBA and the Main Street program.

#### **Article 2. TERM OF AGREEMENT.**

This Agreement becomes effective on July 1, 2008 and will terminate on June 30, 2009, unless earlier terminated by either party in accordance with Article 7. By agreement of the parties, this Agreement may be extended for up to two additional 12 month periods following the expiration of the initial term of the Agreement.

#### **Article 3. WORK PLAN.**

OTBA shall operate pursuant to a work plan which establishes the following goals for the individual Main Street Committees:

- a. The Design Committee will complete three Facade Improvement Grant projects and organize and host two Old Takoma Clean-up Days.
- b. The Economic Restructuring Committee will develop and distribute marketing materials, recruit one new business, and develop operating procedures for a Main Street Revolving Loan Fund.
- c. The Organization Committee will redesign the existing web site and recruit 10 new volunteers.
- d. The Promotions Committee will organization and host two community events.

#### **Article 4. OPERATING SUBSIDY.**

a. Operating Subsidy.

An operating subsidy in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) shall be provided to OTBA by the City. Funds are to be provided on a dollar for dollar match basis as set forth in Article 4©. The value of in-kind contributions cannot exceed 25% of required match.

b. Failure to Budget Funds for Operating Subsidy.

If funds for the Twenty-Five Thousand Dollar (\$25,000.00) operating subsidy are not included in the City's FY09 budget and subsequent budgets adopted by the City Council, then this Agreement shall be null and void without the necessity of any further action by either party.

c. Eligible Matching Funds and Documentation.

Eligible matching funds include membership dues, proceeds from special events, cash donations, and in-kind contributions of required professional services. Documentation of the match may include verification of deposits by OTBA or value of donated services. In-kind contributions are to be documented by the vendor and valued at the market rates of the cost of the services provided.

d. Disbursement of City Funds.

Funds will be disbursed to OTBA by the City in four equal payments with payments to be made on a quarterly basis after receipt and acceptance of documentation of required matching funds and progress reports.

#### **Article 5. RECORDS AND PROGRESS REPORTS.**

a. Records.

OTBA shall maintain records, including copies of bills, invoices and receipts as appropriate, to establish the total of expenditures and payments and shall make these records available to the City upon request. During the term of this Agreement, OTBA shall provide to the City a quarterly accounting of revenues and expenditures with copies of income statements and a balance sheet. OTBA shall maintain these records for a period of three years following the termination of this Agreement.

b. Progress Reports.

OTBA shall provide quarterly reports to the City of the overall activities and

accomplishments of OTBA and information on the progress made towards the goals set forth in Article 3, Work Plan.

c. Quarterly Statements and Progress Reports.

OTBA's quarterly statements of revenues and expenditures and quarterly progress reports shall be submitted to the City by October 10, 2008, January 10, 2009, April 10, 2009, and July 10, 2009, for the initial term of this Agreement.

**Article 6. REPRESENTATIONS AND WARRANTIES.** OTBA represents and warrants:

a. Organization.

OTBA is a non-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Maryland.

b. Tax-Exempt Status.

OTBA is an organization described in Section 501(c)(3) of the Internal Revenue Code and is exempt from federal income tax under Section 501(a) of the Internal Revenue Code except with respect to unrelated trade or business income. The Internal Revenue Service ("IRS") has determined that OTBA is an organization described in Section 501(c)(3) of the Internal Revenue Code, and such determination continues in full force and effect. A copy of the IRS letter determining OTBA's tax exempt status will be provided to the City upon request. OTBA has not knowingly engaged in any transaction or activity that could cause such tax exemption to be revoked, and no such transaction or activity is presently contemplated or under consideration. If OTBA loses its tax-exempt status it will notify the City immediately.

c. Authorization; Binding Effect.

The execution, delivery and performance by OTBA of this Agreement has been duly authorized by all requisite corporate action. Upon execution of this Agreement by both parties, this Agreement shall constitute the legal, valid and binding obligation of OTBA, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of contracts generally against persons similarly situated.

d. Nuclear Weapons Certification.

OTBA is not now, and shall not so long as this Agreement remains in effect, engage in the development, research, testing, evaluation, production, maintenance, storage,

transportation, and/or disposal of nuclear weapons or their components, or the sale of merchandise produced by companies so involved.

e. Non-Discrimination in Employment.

OTBA assures the City that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

**Article 7. TERMINATION.**

a. Termination by Written Notice by Either Party.

Either the City or OTBA may terminate this Agreement upon 30 days prior written notice to the other party.

b. Termination for Breach.

(1) If OTBA shall breach any provision of this Agreement, including any of its representations or warranties, the City shall be entitled to suspend the honoring of disbursement requests and expense reimbursements and if such breach is not remedied within 30 days of notice to OTBA, then the City may declare this Agreement terminated, provided, however, City shall not terminate this Agreement based on breach if such breach is of a nature that cannot be cured within 30 days, so long as OTBA commences to cure such breach within 30 days of notice of the breach and thereafter diligently prosecutes such cure to completion.

(2) In the event of a breach of this Agreement by OTBA beyond any applicable notice and cure period, the City shall have available to it all applicable remedies under the laws of the State of Maryland, regardless of whether any such remedy is a remedy at law or in equity.

c. Repayment to the City.

If this Agreement is terminated for any reason prior to the expenditure of all City funds, then any remaining funds that have been disbursed to OTBA shall be returned to the City, free and clear of any claim or interest of OTBA.

**Article 8. NOTICES.**

Any required reports, notices or other communications under this Agreement must be in writing and personally delivered, mailed by first-class mail, sent by courier or overnight delivery service, faxed,

or e-mailed, as appropriate, as follows:

If to OTBA: Old Takoma Business Association  
Attn: Rosalind Grigsby, Executive Director  
PO Box 5440, Takoma Park, MD 20913  
Phone: (240) 253-4229  
Fax: (240) 253-4229  
[E-Mail:execdirector@mainstreettakoma.org](mailto:execdirector@mainstreettakoma.org)

If to City: City of Takoma Park  
Attn: Sara Anne Daines, HCD Director  
7500 Maple Avenue  
Takoma Park, MD 20912  
Phone: (301) 891-7224  
Fax: (301) 270-4568  
E-Mail: [SaraD@takomagov.org](mailto:SaraD@takomagov.org)

Either party may change the person, address, phone, fax, or e-mail for notices to the other party by a notice in writing to the other. Any notices under this Agreement shall be deemed given when the notice is received by the other party or, for notices given by mail, three days after the notice is deposited, properly addressed and postage prepaid, in the United States mail.

#### **Article 9. INDEMNIFICATION.**

OTBA is responsible for any loss, personal injury, death, and any other damages that may be done or suffered by reason of OTBA's negligence or failure to perform any obligations under this Agreement. OTBA shall indemnify, and save harmless the City from and against all losses, liabilities, claims demands, damages, costs and expenses of any kind, including attorney's fees and litigation expenses, suffered or incurred due to OTBA's negligent acts or omissions, or breach of or failure to perform any of its obligations under this Agreement. For purposes of this paragraph, City includes its agencies, departments, officers, agents, elected and appointed officials, and employees.

#### **Article 10. NO PARTNERSHIP OR JOINT VENTURE.**

Nothing contained in this Agreement is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and OTBA. None of the officers, agents or employees of OTBA shall be deemed to be employees or agents of the City for any purpose whatsoever.

#### **Article 11. MISCELLANEOUS.**

This Agreement contains the entire agreement between the parties. All oral or written negotiations and prior dealings are merged into this Agreement. OTBA may not assign, transfer or subcontract this Agreement or any interest or any claim under this Agreement, without the express written

consent of the City, and any attempted assignment, transfer, or subcontracting without such prior written consent shall be void. This Agreement is binding upon the parties, their heirs, successors, administrators, and assigns. Any amendment or modification to this Agreement must be in writing signed by both parties. The failure of the City to enforce any of the terms, conditions or covenants of this Agreement is not a waiver of a subsequent breach or default of the terms of this Agreement. This Agreement shall be governed by and interpreted in accordance with Maryland laws.

**IN WITNESS WHEREOF**, the City of Takoma Park, Maryland, and the Old Takoma Business Association, Inc. have signed this Agreement as of the date first above written.

**OLD TAKOMA BUSINESS ASSOCIATION, INC.**

Attest:

\_\_\_\_\_  
Pennye Jones Napier, President

\_\_\_\_\_  
Faith Wheeler, Secretary

Date signed:\_\_\_\_\_

Date signed:\_\_\_\_\_

**CITY OF TAKOMA PARK, MARYLAND**

Approved as to form and legality:

\_\_\_\_\_  
Barbara B. Matthews, City Manager

\_\_\_\_\_  
Linda S. Perlman, Assistant City Attorney  
City of Takoma Park, Maryland

Date signed:\_\_\_\_\_

Date signed:\_\_\_\_\_

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